

Steven C. Tycksen, #3300

steve@tyshlaw.com

Bryan J. Stoddard #13590

bryan@tyshlaw.com

TYCKSEN & SHATTUCK, L.L.C.

12401 South 450 East, Suite E-1

Draper, Utah 84020

Telephone: (801) 748-4081

Facsimile: (801) 748-4087

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

JAMES ARNETT,

Plaintiff,

v.

BENJAMIN SNOW HOWARD;
LIFELINE MEDIA LLC, a Texas
entity; NATIONWIDE AFFORDABLE
HOUSNG, a Texas corporation; and the
BEN HOWARD TRUST, and Idaho
trust,

Defendants.

**REQUEST TO SUBMIT MOTION
TO DISMISS FOR DECISION
(Oral Argument Requested)**

Judge Ted Stewart

Case No.: 2:13-cv-00591-TS

Defendants Benjamin Howard, Lifeline Media LLC, Nationwide Affordable
Housing and the Ben Howard Trust, through counsel, hereby submit for decision by this

Court their Motion to Dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

1. This case was originally filed by Plaintiff James Arnett (“Arnett”) in Arizona federal district court in April 2012. (See Document #1).
2. About six months later, Arnett filed his First Amended Complaint in January 2013. (See Document #35).
3. Defendants filed a Motion to Dismiss Plaintiff’s First Amended Complaint & Memorandum in Support January 15, 2013. (See Document #37).
4. Arnett filed a Response in opposition to Defendants’ Motion on February 1, 2013. (See Document #40).
5. Defendants filed a Reply in support of their Motion on February 11, 2013. (See Document #41).
6. In their Motion to Dismiss, Defendants originally asserted that Plaintiff’s First Amended Complaint should be dismissed on three grounds: (1) lack of personal jurisdiction over Defendants, (2) improper venue and (3) failure to state a claim upon which relief can be granted under Rule 12(b)(6). Defendants also requested, in the alternative, that if the Court was not inclined to grant the Motion to Dismiss on the ground of improper venue, that the Court should grant a change of venue and transfer the case to Utah (this Court). (See Document #37).

7. In his Report and Recommendation (filed May 29, 2013), the Arizona Magistrate Judge Ferraro recommended that Defendants' request to transfer venue to Utah be granted. Since Arizona was not the proper venue for the case, the Arizona court purposefully did not reach the arguments Defendants raised in their 12(b)(6) motion to dismiss for failure to state a claim. (See Document #47).
8. Having received no objection to the Report and Recommendation, on June 25, 2013 the Arizona District Court Judge Bury adopted the Magistrate's Recommendation and transferred this case here to Utah.
9. Now that this case is here in the proper venue, Defendants request that this Court consider the pleadings previously filed and make a decision on Defendants 12(b)(6) Motion to Dismiss for failure to state a claim upon which relief can be granted.
10. Defendants request oral argument on their motion.

DATED and electronically signed this 26th day of June, 2013.

_____/s/Bryan J. Stoddard_____
TYCKSEN & SHATTUCK
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing REQUEST TO
SUBMIT MOTION TO DISMISS FOR DECISION, was sent to the following parties by
the following means:

James Arnett 9288 N. Monmouth Court Tucson, AZ 85742	U.S. Mail (Postage Prepaid)
--	--

On this 26th day of June 2013.

/s/ Alicia Riggs